

PT 99-48

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ABS WATER CO-OPERATIVE)		
)		
Applicant)		
)	Docket #	96-1-38
v.)		96-1-39
)	Parcel Index #	14-0-0244-002
THE DEPARTMENT OF REVENUE)		12-0-0427-002
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Lonnie R. Dunn appeared on behalf of ABS Water Co-Operative.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on March 3, 1999, to determine whether or not Adams County Parcel Index Nos. 14-0-0244-002 and 12-0-0427-002 qualified for exemption from real estate taxation for the 1996 assessment year.

Ms. Cindy Keyes, the manager of ABS Water Co-Operative (hereinafter referred to as the "Applicant") and Mr. Paul Humke, a former member of the board of directors of the applicant were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant owned the parcels here in issue during the 1996 assessment year; secondly, whether the applicant is a charitable organization; and finally, whether the applicant used these parcels for charitable purposes during 1996.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned these parcels during the 1996 assessment year. It is further determined that the applicant is not a charitable organization. Finally, it is determined that the applicant did not use these parcels for charitable purposes during 1996.

It is therefore recommended that these parcels remain on the tax rolls and be assessed to the applicant, the owner thereof, for the 1996 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On July 16, 1996, the Adams County Board of Review transmitted to the Department Applications for Property Tax Exemption To Board of Review concerning Adams County Parcel Index No. 14-0-0244-002, which was improved with a booster pump station, and Adams County Parcel Index No. 12-0-0427-002, which was improved with a 75,000 gallon elevated water tank. (Dept. Ex. Nos. 2 & 2E, Tr. p. 21)

3. On February 14, 1997, the Department advised the applicant that it was denying the exemption of these parcels and the structures thereon because these parcels were not in exempt ownership and also they were not in exempt use. (Dept. Ex. Nos. 3 & 3A)

4. By a letter dated February 26, 1997, the attorney for the applicant requested a formal hearing concerning the denial of the exemption of these parcels. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on March 3, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. At the hearing the attorney for the applicant moved to amend the applications filed in this matter to seek exemption pursuant to 35 **ILCS** 200/15-65 as being owned by a charitable organization and used for charitable purposes. This motion was allowed. The applications in this matter had originally been filed seeking exemption pursuant to 35 **ILCS** 200/15-140 which exempts property owned by public water districts organized under the Public Water District Act and also property owned by incorporated towns, villages or cities used to convey water to said incorporated towns, villages or cities. (Tr. p. 8)

7. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois, for the following purposes:

. . . to furnish water supply facilities for drinking and general domestic use on a co-operative basis to its Members; provided, however, that said corporation shall not be operated for pecuniary profit to said corporation or to its Members. . . . (Dept. Ex. No. 2J)

8. The applicant acquired Adams County Parcel Index No. 14-0-0244-002 by a quit claim deed dated June 18, 1992. During 1996, this parcel was improved with a booster pump station. The booster pump station consisted of an underground concrete vault which contained two electric pumps which pump water to the applicant’s elevated water tank located at Kingston. (Dept. Ex. No. 2D, Tr. p. 13)

9. The applicant acquired Adams County Parcel Index No. 12-0-0427-002 by a quit claim deed dated October 27, 1993. During 1996, this parcel was improved with a 75,000 gallon elevated water tank located at Kingston. (Dept. Ex. No. 2G, Tr. p.21)

10. The booster pump station and the elevated water tank allowed the applicant to provide water at 20 pounds pressure to its member customers in the area surrounding Kingston. (Tr. p. 13)

11. The applicant only pays real estate taxes on these two parcels. The applicant does not pay real estate taxes on the easements where its transmission and distribution mains are located. (Tr. pp. 30 & 31)

12. During 1996 the applicant purchased water from the Clayton-Camp Point Water Commission and distributed it to approximately 789 member customers located in Adams, Brown, Schuyler, and Pike Counties in Illinois. (Appl. Ex. No. 9)

13. The applicant's customer members are primarily farm families. The applicant also provides water service to a few businesses and several hog confinement operations. (Tr. p. 18)

14. The applicant has no capital, capital stock, or shareholders. When the applicant makes a profit it is put back in the water system. (Tr. pp. 16 & 18)

15. If a prospective customer signs up for service before the transmission main to serve the customer is in place, the prospective customer must sign a contract and pay a \$75.00 deposit. When line construction begins, the prospective customer must pay an additional \$150.00. When the applicant is ready to connect the meter the customer is charged a \$225.00 meter connection charge. (Tr. p.15)

16. If the water line is in place and a customer wants to receive water service the price is \$500.00 plus the cost to install the meter. (Tr. p. 15)

17. The member customers of the applicant are required to read their own meters, complete the billing form, and send it to the applicant's office with payment before the 15th of each month. (Appl. Ex. No. 14)

18. If the member customer does not complete the billing form and send it to the applicant's office until after the 15th of the month, a 10% penalty is added to the bill. (Appl. Ex. No. 14)

19. If a member customer's meter reading and payment are not received by the predetermined late date a service operator from the applicant will come out and read the meter. The charge for this meter reading is \$7.50. If an employee of the applicant is required to go out to collect a past due bill there is a \$15.00 collection charge. (Appl. Ex. No. 14)

20. If a member customer pays with a bad check, the applicant assesses a bad check charge of \$10.00. (Appl. Ex. No. 14)

21. If a member customer does not pay their bill, after 30 days the applicant will cap the service line and pull the meter, thereby cutting off the member customer's water service. If a member customer advises the applicant that they cannot pay, the applicant will allow them to make installment payments. (Tr. p. 27)

22. There were one or two service cut-offs for non-payment during 1996. (Tr. p. 34)

23. The applicant does not have a policy concerning the waiver or reduction of fees other than to allow installment payments. (Appl. Ex. No. 3)

24. The applicant's primary sources of funds to build its water system and to construct additions thereto are Farmers Home Administration loans and grants. (Tr. pp. 28 & 29)

25. The applicant's statement of income and expenses for 1996 indicates that the applicant's sources of income during 1996 were water sales and the collection of the various late charges and penalties as previously described. (Appl. Ex. No. 12, Tr. pp. 34 & 35)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof is on the applicant in this matter.

It should be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits.

In this matter, the benefits derived are only available to persons who live within the applicant's service area. In view of the fact that customer members who cannot afford to pay their water bills are cut off, it is clear that charity is not dispensed to all who need and apply for it and that obstacles are placed in the way of those seeking the benefits. In addition, the various penalties assessed for late payment, failure to promptly read the meter and send in the amount owing, as well as the bad check charge make it clear that this is a business operation and not a charitable endeavor. Consequently it is clear that the applicant is not a charitable organization.

In addition, the thirty-day cut-off period, late penalty provisions and bad check charges make it clear that these parcels were not used for charitable purposes during 1996.

While the applicant provides a public benefit by providing water to customers in its service area it does not qualify as a charitable organization using the parcels here in issue for charitable purposes within the purview of the constitution, statutes, and court cases.

I therefore recommend that Adams County Parcel Index Nos. 14-0-0244-002 and 12-0-0427-002 remain on the tax rolls for the 1996 assessment year and be assessed to the applicant, ABS Water Co-Operative, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July 20, 1999